

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MICHAEL T. TOOLE,

Defendant.

NO. 3:09-CR-385

I N F O R M A T I O N

THE UNITED STATES ATTORNEY CHARGES:

Count 1

18 U.S.C. §§ 1343, 1346
(Honest Services Wire Fraud)

1. From in or about July 2005, the exact date being unknown, to in or about September 2008, in the Middle District of Pennsylvania and elsewhere, the defendant,

MICHAEL T. TOOLE,

devised and intended to devise a material scheme and artifice to defraud the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE, as a judge of the Court of Common Pleas for Luzerne County, performed free from deceit, favoritism, bias, self-enrichment, self-dealing, concealment, and conflict of interest.

2. At all times material to this Information, the defendant MICHAEL T. TOOLE was an elected judge of the Court of Common Pleas of Luzerne County. Defendant MICHAEL T. TOOLE owed a fiduciary duty to the public not to realize personal financial gain through his office other than compensation provided by law, to refrain from

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conflicts of interest or seeking or accepting improper influence and to file a truthful and complete annual statement of financial interests, reporting certain direct and indirect sources of income and gifts. The fiduciary duty owed by the defendant was imposed by law. The sources of the fiduciary duty included, but were not limited to: Article 5, §§ 17(b) and 17(c) of the Pennsylvania Constitution, the Pennsylvania Code of Judicial Conduct and Orders of the Pennsylvania Supreme Court.

3. During the time period alleged in this Information, defendant MICHAEL T. TOOLE corruptly abused his position as judge for the Court of Common Pleas for Luzerne County and defrauded the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE. One way the defendant MICHAEL T. TOOLE corruptly abused his position was by concealing an ongoing financial relationship with an attorney, hereinafter referred to as PARTICIPANT #1, who represented parties in civil litigation matters pending before defendant MICHAEL T. TOOLE. During the time period alleged in this Information, defendant MICHAEL T. TOOLE accepted things of value from PARTICIPANT #1, including multiple free uses of a New Jersey beach house controlled by PARTICIPANT #1. The defendant MICHAEL T. TOOLE accepted free use of the beach house during the summer season when MICHAEL T. TOOLE'S free use of the house resulted in his receipt of a benefit worth thousands of dollars.

4. At all times material to this Information, judges of the Court of Common Pleas for Luzerne County facilitated arbitration hearings designed to resolve claims of plaintiffs attempting to recover damages from their insurance providers under the uninsured/underinsured motorist provisions of their insurance policies. As part of the arbitration process, the plaintiff's attorney selected an arbitrator, commonly referred to as "the plaintiff's arbitrator," and the insurance company defendant's attorney selected an arbitrator commonly known as "the defense arbitrator." The plaintiff and the defendant were also encouraged to agree upon an impartial third arbitrator, known as "the neutral arbitrator" who, in many instances, had the "neutral" deciding vote in the outcome of the arbitration, including the amount of money damages awarded, if any. If the plaintiff and the defendant could not agree upon an impartial neutral arbitrator, they were required to file a motion with the Luzerne County Court of Common pleas requesting a judge of the Court of Common Pleas to appoint an impartial neutral arbitrator.

5. After defendant MICHAEL T. TOOLE's first free use of PARTICIPANT #1's beach house, defendant MICHAEL T. TOOLE, in his capacity as a judge for the Court of Common Pleas for Luzerne County, exercised discretionary decision-making authority in an uninsured/underinsured motorist arbitration proceeding in which PARTICIPANT #1 acted as attorney for a plaintiff. In March 2006, defendant MICHAEL T. TOOLE presided over a proceeding to select a neutral arbitrator for an uninsured/underinsured motorist

arbitration in which PARTICIPANT #1 served as plaintiff's attorney. Defendant MICHAEL T. TOOLE, through use of an intermediary, secretly asked PARTICIPANT #1 to tell the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to serve as the neutral arbitrator in the arbitration. PARTICIPANT #1, through use of the intermediary, told the defendant MICHAEL T. TOOLE the name of the person PARTICIPANT #1 wished to be appointed. Thereafter, during a judicial proceeding in the presence of counsel for all of the litigants, the defendant MICHAEL T. TOOLE appointed the neutral arbitrator requested by PARTICIPANT #1 under the guise that the appointment was made free from deceit, bias, favoritism, self-enrichment, and conflict of interest. In fact, however, the appointment was corrupt, deceptive, and biased and was made in a manner that undermined the fairness and integrity of the arbitration process since defendant MICHAEL T. TOOLE had previously received things of value from PARTICIPANT #1, did not recuse himself from the matter, did not disclose to the other parties to the litigation his receipt of things of value from PARTICIPANT #1, and did not disclose to the other parties in the litigation his secret ex-parte communication with PARTICIPANT #1.

6. In approximately November 2007, the parties jointly filed a motion before defendant MICHAEL T. TOOLE to force the arbitrators to render an opinion in the case. Despite his receipt of things of value from PARTICIPANT #1, defendant MICHAEL T. TOOLE once again did not recuse himself from ruling on the motion, did not disclose his receipt of things of value from PARTICIPANT #1, and did not

disclose his previous secret and improper ex-parte communication with PARTICIPANT #1. Defendant MICHAEL T. TOOLE exercised his discretion to act and issued an order directing the arbitrators to rule upon the case within a limited period of time.

7. It was further a part of the scheme and artifice to defraud that, in the summer of 2008, defendant MICHAEL T. TOOLE and PARTICIPANT #1 took affirmative action to conceal the fact that defendant MICHAEL T. TOOLE had received free use of PARTICIPANT #1'S beach house and to create a false impression that the defendant MICHAEL T. TOOLE had paid for use of the beach house.

8. For the purpose of executing the above-described material scheme and artifice to defraud and to deprive the citizens of the Commonwealth of Pennsylvania, the Judiciary of the Commonwealth of Pennsylvania, and litigants before the Luzerne County Court of Common Pleas of their right to the honest services of MICHAEL T. TOOLE, defendant MICHAEL T. TOOLE transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signals and sounds, namely, materially false statements of financial interest that were filed with the Administrative Office of the Pennsylvania Courts, through use of the Internet. For example, a statement of financial interests filed by defendant Michael Toole on April 28, 2006, was filed electronically, in interstate commerce, through use of the Internet. Statements of financial interests filed by defendant MICHAEL T. TOOLE on April 28, 2006, April 30, 2007, and May 1, 2008 were all materially false to the extent that they did not identify PARTICIPANT #1, and

others, as sources of income and gifts received by defendant
MICHAEL T. TOOLE.

In violation of Title 18, United States Code, §§ 1343 and
1346.

THE UNITED STATES ATTORNEY FURTHER CHARGES:

Count Two

26 U.S.C. § 7206(1)

(Subscribing and Filing a Materially False Tax Return)

1. On or about April 18, 2008, in the Middle District of Pennsylvania and elsewhere, the defendant,

MICHAEL T. TOOLE,

a resident of Luzerne County, Pennsylvania, did willfully make and subscribe, and did cause to be made and subscribed, an IRS Form 1040, which was verified by a written declaration that it was made under the penalties of perjury, and which defendant MICHAEL T. TOOLE did not believe to be true and correct as to every material matter. That IRS Form 1040, which was prepared and signed in the Middle District of Pennsylvania and was filed with the Internal Revenue Service, reported the defendant's taxable income for the year 2006 to be \$303,808, whereas, as he then and there knew and believed, the defendant's actual taxable income for the year 2006 was materially more than that amount.

2. In 2005, defendant MICHAEL T. TOOLE referred a case to an attorney in Luzerne County, who will hereinafter be referenced as PARTICIPANT #2.

3. Following settlement of this case, defendant MICHAEL T. TOOLE accepted a cash referral fee in October of 2006 of

approximately \$30,000 from PARTICIPANT #2. Defendant MICHAEL T. TOOLE failed to report this income on his income tax return.

In violation of Title 26, United States Code, § 7206(1).



DENNIS C. PEANNENSCHMIDT
UNITED STATES ATTORNEY

12-2-09

DATE